

The Uninsured Employers' Fund (UEF) asks the Utah Labor Commission to review Administrative Law Judge Marlowe's dismissal of C.N.A. Insurance Company, a.k.a. Transportation Insurance Company, as a party to K.G.F.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

### **BACKGROUND AND ISSUE PRESENTED**

On August 19, 2003, Mr. F. filed an application with the Commission seeking workers' compensation benefits for injuries allegedly suffered on August 4, 2003, while working for NW Roofing. In the belief that NW Roofing was insured by Transportation Insurance, a subsidiary of C.N.A., Transportation Insurance was also named as a defendant to Mr. F.'s claim.

C.N.A. subsequently moved for dismissal as a defendant on the grounds it was not NW Roofing's workers' compensation insurance carrier at the time of Mr. F.'s accident. Judge Marlowe granted C.N.A.'s request. Then, because NW Roofing appeared to be uninsured, Judge Marlowe added the UEF as a defendant.

UEF submitted an answer to Mr. F.'s claim and included as part of the answer a request for Commission review of Judge Marlowe's determination that C.N.A. did not insure NW Roofing.

### **FINDINGS OF FACT**

The facts of this matter are simple and undisputed. C.N.A., through Transportation Insurance, began providing workers' compensation insurance for NW Roofing on February 2, 2003. On or about June 30, 2003, C.N.A. notified NW Roofing that it was canceling insurance coverage at 12:01 a.m. on August 4, 2003. C.N.A. also provided timely notice of the foregoing cancellation to all other entities entitled to such notice under Utah law.

### **DISCUSSION AND CONCLUSION OF LAW**

As a preliminary matter, the Commission notes that the UEF is seeking interlocutory review of Judge Marlowe's dismissal of C.N.A. as a defendant in this matter. Such interlocutory reviews are not favored and will only be considered if the advantages outweigh "the interruption of the hearing process and the other costs of piecemeal review."<sup>1</sup> Interlocutory motions for review are appropriate only in unusual cases.

While interlocutory appeals are not favored, in previous cases the Commission has agreed to consider them if the dispute involves a question of which parties that should be included in an adjudicatory proceeding. In such cases, the benefit from identifying the proper parties outweighs other considerations. The Commission will therefore accept and decide UEF's interlocutory motion

for review in this case.

UEF argues that C.N.A.'s notice of cancellation of NW Roofing's coverage, effective as 12:01 a.m. on August 4, 2003, should be construed as canceling coverage at the end of the day of August 4, rather than at the start of the day. While UEF relies on custom and ease of administration to support its argument, the UEF does not identify any statute or regulation to support its position. While the standard proposed by UEF may represent a good idea, C.N.A. cannot be held to that standard until it is adopted by statute or regulation.

### **ORDER**

The Commission denies UEF's motion for review, affirms Judge Marlowe's order dismissing C.N.A. as a defendant, and remands this matter to Judge Marlowe for further proceedings consistent with this decision. It is so ordered.

Dated this 29<sup>th</sup> day of June, 2004.

R. Lee Ellertson, Commissioner

1. Charles H. Koch, Jr., Administrative Law and Practice (1985), §6.75